

USSN 08/943,776
Amendment and Response

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REMARKS/ARGUMENTS

The listing of the claims are presented above. Claims 1, 6, 10, 13, 16, 20-21, 29, and 31-43 are currently pending in the application. Claims 33-42 have been determined by the Examiner to be allowable. Claims 2-5, 7-9, 11-12, 14-15, 17-19, 22-28, and 30 are canceled without prejudice to future filing. Claims 20 and 21 have been withdrawn from prosecution. Claims 31 and 43 are currently amended. Basis for the amendments to the claims is provided in the specification and therefore no new matter is added by these amendments. Entry of the amendments to the claims, and consideration of the remarks presented herein is respectfully requested.

Rejections on the Basis of 35 U.S.C. § 102(e)

Claims 23, 24, 27, 28, 31-32, and 43 have been rejected on the basis of 35 U.S.C. § 102(e) over Yu et al, U.S. Patent 6,153,402 (Yu et al.), for reasons of record in the previous Office Action, paper no. 13, as well as in the paper mailed 2/10/2005. This rejection is respectfully traversed.

Claims 23, 24, 27, and 28 have now been canceled without prejudice to future filings. Claim 31 has been amended to recite an isolated polypeptide comprising amino acids 1-199 of SEQ ID NO: 2. Applicants have previously pointed out (Response originally filed August 10, 2005, and resubmitted with an RCE on October 11, 2005) that the priority document of Yu et al., provisional application 60/013,285 filed March 12, 1996, does not disclose SEQ ID NO: 1 or 2 of the present application, nor any polypeptide comprising amino acids 1-199 of SEQ ID NO: 2 of the present application. Therefore, Applicants maintain that claim 31 as amended, and claim 32, which depends from claim 31, is not anticipated by Yu et al.

In addition, the Examiner has maintained the rejection of claim 43 as anticipated by Yu et al. As suggested by the Examiner, claim 43 has been amended to recite a polypeptide consisting of an amino acid sequence that is at least 70% identical to SEQ ID NO: 6, wherein the polypeptide is capable of apoptosis. Applicants maintain that there is no sequence disclosed in Yu et al. that is at least 70% identical to SEQ ID NO: 2. Therefore, Applicants request reconsideration and withdrawal of the rejection of claims 31, 32, and 43 on the basis of 35 U.S.C. §102(e) as anticipated by Yu et al. patent.

USSN 08/943,776
Amendment and Response

Claims 1, 6, 10, 13, 16, 23, 24, 27-29, 31, 32, and 43 are rejected under 35 U.S.C. § 102(e) as allegedly anticipated by U.S. Patent 6,462,176 and US Patent Application Publication US2002/0192729A1 (Ashkenazi-1 and -2). This rejection is respectfully traversed. Claims 23-24, and 27-28 have been canceled. Applicants wishes to point out that Ashkenazi-1 and -2 also do not disclose SEQ ID NO: 5 and 6 of the present invention, nor sequences which are 70% or greater that SEQ ID NO: 6, nor a polynucleotide sequence which encodes SEQ ID NO: 6 or amino acid sequences 70% or more identical. Therefore, on the basis of the amendment to 43, Applicants request the reconsideration and withdrawal of the rejection of claim 43 on the basis of 35 U.S.C. § 102(e) as anticipated by the Ashkenazi references. Applicants wish to defer provoking an interference on the remaining claims with the Ashkenazi references until all other issues have been resolved.

USSN 08/943,776
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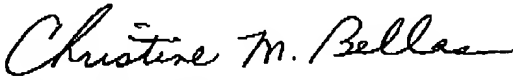
CONCLUSION

Entry of the amendments to the claims is respectfully requested. On the basis of the amendments to the claims, and the arguments presented above, Applicants respectfully request reconsideration and withdrawal of the current pending rejections as indicated above.

Applicants' attorney invites the Examiner to call her at the number below if it would be helpful in advancing the prosecution of this application.

Immunex Corporation
Law Department
1201 Amgen Court West
Seattle, Washington 98119-3105
Telephone: (206) 265-8294

Respectfully submitted,


Christine M. Bellas
Attorney for Applicant
Registration No. 34,122

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